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PRE-APPEAL BRIEF REQUEST FOR REVIEW		Docket Number (Optional)
		60469-220;PA00005079-US
CERTIFICATE OF FACSIMILE I hereby certify that this Pre-Appeal Brief Request For Review and Notice of Appeal are being facsimile transmitted to (571) 273-8300. on <u>February 18, 2009</u>  Signature _____ Typed or printed <u>Theresa M. Palmateer</u> name _____		Application Number 10/537,384 Filed 06/03/2005
		First Named Inventor Richard N. Fargo
		Art Unit 3651 Examiner Singh, Kavel

Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.

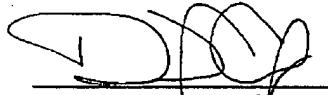
This request is being filed with a notice of appeal.

The review is requested for the reason(s) stated on the attached sheet(s).

Note: No more than five (5) pages may be provided.

I am the

applicant/inventor.
 assignee of record of the entire interest.
 See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed.
 (Form PTO/SB/96)
 attorney or agent of record.
 Registration number 37,139
 attorney or agent acting under 37 CFR 1.34.
 Registration number if acting under 37 CFR 1.34 _____



Signature
David J. Gaskey
 Typed or printed name

(248) 988-8360

Telephone number

February 18, 2009

Date

NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required.
 Submit multiple forms if more than one signature is required, see below*.

*Total of 1 forms are submitted.

This collection of information is required by 35 U.S.C. 132. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11, 1.14 and 41.6. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

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PA-000.05079-USIN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Richard N. Fargo *et al.*
Serial Number: 10/537,384
Filed: 06/03/2005
Group Art Unit: 3651
Examiner: Singh, Kavel
Title: DRIVE BELT FOR A PASSENGER CONVEYOR

REQUEST FOR PRE-APPEAL BRIEF REVIEW

Mail Stop AF
Commissioner for Patents
P. O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

This paper is responsive to the Final Office Action mailed on November 18, 2008. Applicant hereby requests Pre-Appeal Brief Review because there is no *prima facie* case of obviousness.

Applicant's claims are directed to a unique drive belt and a unique drive assembly for a passenger conveyor. For convenience, Applicant's claims 1 and 13 are reproduced below.

1. A drive belt for a passenger conveyor, comprising:
an inner side adapted to engage a drive member; and
an outer side including a plurality of teeth that are adapted to engage a corresponding portion of a step chain, the outer side teeth each including a base and a pliable projection distal from the base.

13. A drive assembly for a passenger conveyor, comprising:
a step chain having a plurality of links each having a plurality of engaging members;
a drive mechanism; and
a belt having an inner side that cooperates with the drive mechanism and an outer side including a plurality of teeth having engaging surfaces that are at least partially concave, a portion of the teeth elastically deforming responsive to

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contact with the engaging members on the step chain, wherein movement of the drive mechanism causes movement of the belt which causes movement of the step chain.

Applicant respectfully submits that there is no *prima facie* case of obviousness against any of claims 1-4, 6, 8, 13, 14, 15, 16, 18, 19 or 26. The Examiner has rejected those claims under 35 U.S.C. §103 as being unpatentable over the *Boltrek* reference in view of the *Hart* reference. There is no *prima facie* case of obviousness because the references do not teach what the Examiner attributes to the references and the proposed modification to the *Boltrek* reference cannot be made.

The Examiner suggests that the chain 13 in Figures 1, 2 and 3 of the *Boltrek* reference has "an inner side adapted to engage a drive member (23) (c3 11-2); and an outer side including a plurality of teeth (13) that are adapted to engage a corresponding portion of a step chain (11), the outer side teeth each including a base and a pliable projection (13+) distal from the base (Fig. 2)." That is not, however, what the *Boltrek* reference teaches. The links 13 do include a plurality of teeth 13t as can be appreciated from Figure 2. Those teeth 13t engage the drive member 23 (shown in Figure 1). The teeth 13t do not engage a step chain of any sort. There is no teaching in the *Boltrek* reference of any tooth-like engagement between the links 13 and the steps 11 of *Boltrek*'s escalator. Instead, the only teaching is that the links 13 pivotally connect the series of steps 11 together. (Column 2, lines 70-71)

Given that the only teeth on the links 13 engage the drive member 23, it is impossible to find teeth corresponding to the outer side teeth of Applicant's claims. Therefore, even if the proposed combination could somehow be made, there is no *prima facie* case of obviousness because the result is not what the Examiner contends. There is only one set of teeth 13t on the links 13 of the *Boltrek* reference and they engage what the Examiner considers the drive

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mechanism (23). The only way to establish a *prima facie* case of obviousness would be to have another set of teeth other than the teeth 13t on those links 13. Without that, there is no possible *prima facie* case.

In claim 13, Applicant's belt has an inner side that cooperates with a drive mechanism. The Examiner points to the mechanism 23 as the drive mechanism in the *Boltrek* reference. The teeth 13t in the *Boltrek* reference are on only one side of those links and cannot possibly be on an inner side cooperating with the drive mechanism 23 and also on an outer side for engaging a step chain. The fact that the teeth 13t in the *Boltrek* reference cooperate with the driving mechanism 23 makes it impossible to establish a *prima facie* case of obviousness by contending that the teeth 13t somehow engage a step chain. There is no such teaching in the *Boltrek* reference and no *prima facie* case of obviousness.

Even if it were somehow possible to misconstrue the links 13 of the *Boltrek* reference to correspond to the belt of Applicant's claims, the Examiner's proposed modification to the *Boltrek* reference cannot be made as explained in MPEP 2143.01(VI). The Examiner proposes to replace the metal links 13 of the *Boltrek* reference with a urethane drive belt from the *Hart* reference. That substitution cannot be made without rendering *Boltrek*'s escalators inoperative. The links 13 are made of metal as known in the art and as can be appreciated from the cross-sectional illustration of Figure 3. Metal links are required for interconnecting the steps 11 so that the steps remain a set distance relative to each other during escalator operation. If one were to replace the rigid links 13 with a pliable urethane belt, that would not allow for the steps to maintain a desired and required alignment during escalator operation and would render the system unsuitable for its intended purpose. It is impossible to substitute a pliable urethane belt for the rigid metal links 13 in the *Boltrek* reference. Yet that is exactly what the Examiner

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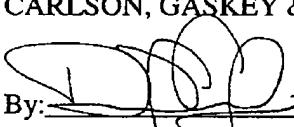
proposes when attempting to manufacture a *prima facie* case of obviousness. The proposed modification cannot be made.

Additionally, one skilled in the art would not look to the drive belt 70 of the *Hart* reference for purposes of deciding how or why to replace the metal links 13 of the *Boltrek* reference. The drive belt 70 in the *Hart* reference does not carry any load of an item being conveyed. Instead, the drive belt 70 wraps around a polymer pulley 65 for purposes of rotating the pulley 65. The links 13 in the *Boltrek* reference, on the other hand, carry the load of the steps 11 and the load of any passengers on any of the steps 11. One skilled in the art would never look to a non-load bearing belt 70 such as that used in the *Hart* reference for determining how to replace the load bearing links 13 of the *Boltrek* arrangement. It is not possible to make the Examiner's proposed modification to the *Boltrek* reference.

For any of the above-stated reasons, there is no *prima facie* case of obviousness and the rejection under 35 U.S.C. §103 must be withdrawn.

Respectfully submitted,

CARLSON, GASKEY & OLDS

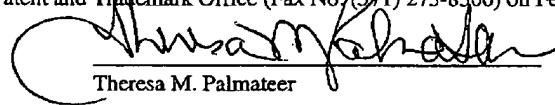
By: 

David J. Gaskey, Reg. No. 37,139
400 W. Maple Rd., Ste. 350
Birmingham, MI 48009
(248) 988-8360

Dated: February 18, 2009

CERTIFICATE OF FACSIMILE

I hereby certify that this Request for Pre-Appeal Brief Review, relative to Application Serial No. 10/537,384, is being facsimile transmitted to the Patent and Trademark Office (Fax No. (571) 273-8300) on February 18, 2009.


Theresa M. Palmateer

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